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**Application for admission pro hac vice
forthcoming.*

Attorneys for Defendant
400 Rivulon Blvd., LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

Keystone Wealth Partners, LLC, an
Arizona limited liability company; and
Creative Planning, LLC, a Missouri
limited liability company,

Plaintiffs,

v.

400 Rivulon Blvd., LLC, an Ohio
limited liability company,

Defendant.

Case No.:

**NOTICE OF REMOVAL OF
ACTION PURSUANT TO 28
U.S.C. § 1332**

[DIVERSITY JURISDICTION]

(Removed from Superior Court of
Arizona, Maricopa County,
Case No. CV2022-004778)

TO THE CLERK OF THE COURT AND ALL PARTIES:

Pursuant to 28 U.S.C. §§ 1332 and 1446, and with full reservation of all rights and defenses, Defendant 400 Rivulon Blvd., LLC, removes this action, currently pending in the Superior Court of Arizona, Maricopa County, Case No. CV2022-004778 (the “State Court Action”), to the United States District Court for the District of Arizona. Removal is proper here because complete diversity exists and the amount of controversy is more than \$75,000.

In further support of removal, Defendant provides this “short and plain statement” of this Court’s removal jurisdiction. 28 U.S.C. § 1446(a); *see also Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87 (2014) (“By design, § 1446(a) tracks the general pleading requirement stated in Rule 8(a) of the Federal Rules of Civil Procedure.”).

PROCEDURAL BACKGROUND

1. On April 14, 2022, Keystone Wealth Partners, LLC, (“Keystone”) and Creative Planning, LLC, (“Creative Planning”) filed a Complaint in the State Court Action against Defendant 400 Rivulon Blvd., LLC (“400 Rivulon”). A copy of the Complaint is attached as Exhibit 2 to the Declaration of Michael K. Foy in Support of the Notice of Removal (“Foy Declaration”), which is itself attached as Exhibit B to this Notice of Removal.

2. The allegations in the Complaint relate to a December 10, 2021 Lease Agreement between Keystone and 400 Rivulon (the “Lease”). The Complaint alleges that 400 Rivulon is the Landlord under the Lease, and that “Plaintiffs are the Tenant.” Complaint ¶¶ 3, 5.

3. The Complaint asserts claims for declaratory judgment, specific performance, breach of the Lease, breach of the implied covenant of good faith and fair dealing, intentional interference with business expectancy, and unfair or deceptive trade practices.

1 Rivulon and Keystone (collectively, the “Parties”), agreed that the Tenant would
2 pay its pro-rata share of certain operating expenses (the “Operating Expenses”).
3 The parties to the Lease did not agree that the Tenant would pay only its pro-rata
4 share of the increase in Operating Expenses above the amount of Operating
5 Expenses in a certain “base year.”

6 b. Because of a drafting error, Paragraph 3(c) of the Lease states
7 that the Tenant is “responsible for its pro-rata share of such operating expenses
8 above a Base Year 2023.” Complaint ¶ 7 (emphasis added).

9 c. The Operating Expenses are expected to be approximately
10 \$9.00 per rentable square foot during the first year of the lease term. That estimate
11 is contained in an invoice that Keystone’s broker, Colliers International, submitted
12 to 400 Rivulon after the Lease was executed. The invoice submitted to 400
13 Rivulon by Colliers International included \$9.00 per rentable square foot of
14 Operating Expenses in its calculation of the total gross rent due under the Lease,
15 which accurately reflected the agreement reached by the Parties.

16 d. Accordingly, if the Tenant is responsible for paying its share of
17 all Operating Expenses, Tenant is expected to owe approximately \$9 per rentable
18 square foot for the first year of the lease term. As the premises covered by the
19 Lease consist of 10,486 square feet of rentable area, Tenant is expected to owe a
20 total of approximately \$94,734 in Operating Expenses for the first year of the lease
21 term. Each year thereafter, Tenant will owe a total of approximately \$94,734 plus
22 or minus any increase or decrease in its share of the total Operating Expenses.

23 e. If, on the other hand, Tenant is only responsible for paying the
24 increase in its share of the Operating Expenses above the amount of Operating
25 Expenses in “Base Year 2023,” Tenant will owe approximately \$0 in Operating
26 Expenses for the first year of the lease term. Each year thereafter, it will owe only
27 its share of the increase in the Operating Expenses beyond the amount of Operating
28 Expenses in Base Year 2023.

1 f. Over the 10-year term of the lease, if the Tenant is responsible
2 for paying its share of all Operating Expenses, it will owe approximately \$947,340
3 more than it would owe if it were responsible for paying only its share of the
4 increase in Operating Expenses above the amount of Operating Expenses in Base
5 Year 2023.

6 15. Count 2 of the Complaint seeks a judgment ordering 400 Rivulon to
7 “proceed with design and construction of Tenant improvements.” Complaint ¶¶ 29,
8 32. However, 400 Rivulon is not required to proceed with the design and
9 construction of Tenant improvements because Keystone has expressed its intent not
10 to perform its obligations under the Lease. The same is true of Creative Planning,
11 to the extent it has any obligations under the Lease. The total cost of designing and
12 constructing tenant improvements is expected to be well more than \$75,000.
13 Accordingly, the amount in controversy for Count 2 is well more than \$75,000.

14 16. Counts 3 through 6 of the Complaint seek damages based on 400
15 Rivulon’s refusal to proceed with the design and construction of the Tenant
16 improvements. The total cost of designing and constructing tenant improvements is
17 expected to be well more than \$75,000. Accordingly, the amount in controversy for
18 each of Counts 3 through 6 is well more than \$75,000.

19 17. Plaintiffs also seek punitive damages, consequential damages, and
20 attorneys’ fees. With respect to consequential damages, Plaintiffs allege, “[I]f 400
21 Rivulon does not deliver the premises in a timely manner, Plaintiffs will not be able
22 to continue their business.” Complaint ¶ 42.

23 18. The Certificate of Compulsory Arbitration filed by Plaintiffs in the
24 State Court Action, which is included in Exhibit 4 to the Foy Declaration, certifies
25 that this case is not subject to compulsory arbitration under the Arizona Rules of
26 Civil Procedure and the Local Rules of Practice for Superior Court of Arizona,
27 Maricopa County. Under those rules, the amount in controversy must be greater
28 than \$50,000 for a case not to be subject to compulsory arbitration. *See* Maricopa

County Super. Ct. R. 3.10.

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

19. Venue is proper in this Court because the District of Arizona, Phoenix Division, is the federal district and division embracing the Superior Court of Arizona, Maricopa County, where the State Court Action was originally filed. 28 U.S.C. § 1446(a).

20. In accordance with 28 U.S.C. § 1446(a) and Civil Local Rule 3.6(b), the most recent version of the docket from the State Court Action is attached as Exhibit 1 to the Foy Declaration, and true and correct copies of all process and pleadings in the State Court Action are attached as Exhibits 2 through 4 to the Foy Declaration.

21. Pursuant to 28 U.S.C. § 1446(b)(1), this Notice is being filed with this Court within thirty (30) days after 400 Rivulon received a copy of Plaintiffs' initial pleading setting forth the claims for relief upon which Plaintiffs' action is based.

22. As required by 28 U.S.C. § 1446(d) and LRCiv 3.6(a), 400 Rivulon has given written notice of the removal to Plaintiffs and filed a copy of this Notice of Removal with the Clerk of the Superior Court of Arizona, Maricopa County.

23. As required by LRCiv 3.6(a), Exhibit A to this Notice of Removal includes both a Civil Cover Sheet (AO Form JS-44) and a Supplemental Civil Cover Sheet for Cases Removed from Another Jurisdiction.

Wherefore, 400 Rivulon hereby removes the above-entitled action to this Court from the Superior Court of Arizona, Maricopa County.

1 Dated: April 27, 2022

2 By: /s/ Michael K. Foy
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4 Michael K. Foy
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15 Attorneys for Defendant
16 400 Rivulon, LLC
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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2022, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants. I also served the attached document on Andrew M. Federhar and Jessica A. Gale, counsel for Plaintiffs, via email at afederhar@spencerfane.com and jgale@spencerfane.com, and via overnight mail at 2415 E. Camelback Road, Suite 600, Phoenix, Arizona 85016.

/s/ Michael K. Foy

Michael K. Foy